the proper and expedient thing to do is not to entertain applications for substitution but to leave it to those interested to do so to present a fresh petition. The petition is set aside with costs.

Petition set aside.

Solicitors: *Allen & Gledhill; Murthi & Partners.*

Reported by *Michele Rasanayagam*

Chong Chin Shoong v Development & Commercial Bank Bhd

HIGH COURT (IPOH) — BANKRUPTCY NO 43-636-88
ABDUL MALEK J
24 OCTOBER 1989

Bankruptcy — Annulment and rescission of adjudication order and receiving order — Validity of bankruptcy notice — Amount of interest stated due — Whether the ruling of the Supreme Court would affect all adjudication orders and receiving orders given before its decision — Debt paid in full after adjudication order and receiving order — Bankruptcy Act 1967, s 3(1)(i)

The respondent had obtained judgment against the applicant as guarantor to Blue Chips Sdn Bhd ('BCSB'). The bankruptcy notice dated 30 June 1988 based on that judgment was served on the applicant on 8 July 1988 and demanded payment of $10,663.79 together with interest at the rate of 18% pa on monthly rests from 18 April 1987 to the date of payment and costs of $350.50. On 28 February 1989, the adjudication order and receiving order was granted in respect of $10,952.50 together with interest and costs ('the first debt'). On 29 March 1989, the respondent filed a proof of debt against the applicant in respect of $1,059,211.84 as at 28 February 1989 ('the second debt') which had arisen from banking facilities granted by the applicant to one CCS Sdn Bhd of which the respondent director had guaranteed the debt with two others. However, in view of the adjudication order and receiving order granted on 28 February 1989, no legal proceedings were taken against the applicant. On 12 July 1989, BCSB paid the respondent $13,919.85. The applicant applied to have the adjudication order and receiving order made against him annulled and rescinded.

Held, granting the application:

(1) The bankruptcy notice was invalid by virtue of the existing law as restated in *Ghazali*'s case[2] rendering the whole proceedings a nullity.

(2) Where the amount of interest due is calculable, it need not be quantified and it was sufficient just to state the rate of interest and the period such interest was repayable.

(3) The bankruptcy notice is void ab initio and the whole bankruptcy proceedings a nullity irrespective of whether the application to set aside is made before or after the adjudication order and receiving order.

(4) The fact that proof of a second debt had been filed against the applicant by the respondent is totally irrelevant as the whole proceedings are a nullity.

(5) The fact that the first debt had been paid by BCSB in full did not render the bankruptcy notice valid in the circumstances nor does it estop the applicant from making this application.

[*Editorial Note*: The respondent has appealed to the Supreme Court vide Civil Appeal No 02-396 of 1989.]

Cases referred to

1 *Low Mun* v *Chung Khiaw Bank Ltd* [1988] 1 MLJ 263 (folld)
2 *Ghazali bin Mat Noor* v *Southern Bank Bhd and four other appeals* [1989] 2 MLJ 142 (folld)

Legislation referred to

Bankruptcy Act 1967 s 3(1)(i)

Christina Chia Li Eng (Miss) for the applicant.
Leslie TL Yeap for the respondent.
N Dharmasegaran for the Official Assignee.

Cur Adv Vult

Abdul Malek J: The judgment debtor had applied by way of notice of motion filed on 21 July 1989 for an order under s 105 of the Bankruptcy Act 1967 (hereinafter 'the Act') for the adjudication order and receiving order made against him on 28 February 1989 to be annulled and rescinded on the grounds that the bankruptcy notice filed on 18 June 1988 was void ab initio in consequence of which any other debt against the judgment debtor would become irrelevant, and because the sum under the bankruptcy notice had in any case been paid in full after the date of the adjudication order and receiving order.

In his supporting affidavit, the judgment debtor had averred that the judgment creditor had obtained judgment against him as guarantor to Blue Chips Sdn Bhd (hereinafter 'BCSB') vide Ipoh Sessions Court case 62-404-87 on 30 July 1987. The bankruptcy notice dated 30 June 1988 based on that judgment was served on him on 8 July 1988 and had demanded payment of $10,663.79 together with interest at the rate of 18% pa on monthly rests from 18 April 1987 to the date of payment and costs of $350.50. On 12 July 1989, BCSB had paid the judgment creditor $13,919.85.

Vide their affidavit filed on 30 August 1989, the manager of the judgment creditor had stated that the adjudication order and receiving order had been granted on 28 February 1989 because the judgment debtor had failed to pay the $10,952.50 together with the interest and costs (hereinafter 'the first debt'). On 29 March 1989, the judgment creditor had filed a proof of debt against the judgment debtor in respect of $1,059,211.84 as at 28 February 1989 (hereinafter 'the second debt'). The second debt had arisen from banking facilities granted by the judgment creditor to one CCS Sdn Bhd of which the judgment debtor's director had guaranteed the debt with two others. However, in view of the adjudication order and receiving order granted on 28 February 1989 as regards the first debt, legal proceedings against the judgment debtor on the second debt had not been proceeded

with. They, however, conceded that the first debt has since been paid in full on 12 July 1989.

The first question to decide is whether the bankruptcy notice is valid. It had stated 'the sum of $10,663.79 together with interest therein at the rate of 18% pa on monthly rests from 18 April 1987 to date of payment and costs of $350.50'. On this point, the Supreme Court decisions in *Low Mun* v *Chung Khiaw Bank Ltd*[1] and *Ghazali bin Mat Noor* v *Southern Bank Bhd and four other appeals*[2] have unambiguously restated s 3(1)(i) of the Act resulting in the answer to the first question to be in the negative.

In *Low Mun*'s case,[1] the Supreme Court had succintly stated that:

> In an act of bankruptcy proceeding, proof of an act of bankruptcy must be clear and convincing since no person should be made bankrupt on an ambiguity. As to the principle for construing bankruptcy notices, we agree with the view that since bankruptcy is entirely a creation of statute law, the rule of strict construction should be applied to the legislative words creating the act of bankruptcy.

At a later part of the judgment, the Supreme Court had categorically concluded that:

> Consequently, we are of the view that when you have the judgment in the usual form that we have here, a bankruptcy notice under the Act must require payment of quantified sum or sums alleged to be due according to the terms of the judgment as at the date of issue of bankruptcy notice. The duty is on the creditor to state the correct amount due, and there is no obligation imposed on the debtor to make inquiries if the amount demanded is ambiguous or unascertained. By demanding payment for unspecified sums in the bankruptcy notice, we hold that such demand is not in accordance with the terms of the judgment, and applying the rule of strict construction, the notice cannot be deemed to fall within s 3 (1)(i) of the Bankruptcy Act 1967. The amount must be quantified because the debtor is entitled to know from the bankruptcy notice exactly what is being claimed to be due on the whole judgment debt and payable by him within the seven-day period. Non-compliance with the terms of the judgment renders the bankruptcy notice invalid, and that failure to comply with such notice is not an act of bankruptcy, and a bankruptcy petition founded on it must necessarily fail.

The details in the bankruptcy notices of the five appeals heard together under *Ghazali bin Mat Noor* v *Southern Bank Bhd and four other appeals*,[2] are on all fours with this case and the Supreme Court had pragmatically pronounced that:

> (1) For a bankruptcy notice to be valid it should state the exact amount due at the date of the bankruptcy notice. The judgment debtor must know the exact amount he has to pay to avoid bankruptcy. He does not have to make calculations or enquiries.
> (2) In the present appeals, as the interest sums payable have not been quantified, the bankruptcy notice in all five cases are invalid ab initio and consequently all subsequent proceedings to these bankruptcy notices are a nullity.

Consequently, the bankruptcy notice in this case is also clearly invalid ab initio.

The second question emanates from the difference in the situation between this case and that Supreme Court decision as there the motion to set aside the creditor's petition was heard before me before the adjudication orders and receiving orders were granted. I was under the impression then that the decision in *Low Mun*'s case[1] did not apply as there the details in the bankruptcy notice did not even state the calculable interest when it stated 'at the rate of 3% above the judgment creditor's base rate of interest per annum'. Further, the costs in that bankruptcy notice were stated as 'costs to be taxed'. Thus, where the amount of interest due is calculable, as in the bankruptcy notice of *Ghazali*'s case,[2] I was of the view that it need not be quantified and it was sufficient just to state the rate of interest and the period such interest was repayable. Here, the motion to annul and rescind the adjudication order and receiving order has of course been made after the event. To my mind, despite learned counsel for the judgment creditor's objections on the grounds that the ruling would not affect all adjudication orders and receiving orders given before the decision in *Ghazali*'s case,[2] my opinion was that a bankruptcy notice is void ab initio and the whole bankruptcy proceedings a nullity on these considerations irrespective of whether the application to set aside is made before or after the adjudication order and receiving order.

Learned counsel for the judgment creditor had vehemently opposed this application as about a month after the adjudication order and receiving order, proof of a second debt against the judgment debtor had been filed to the tune of $1,059,211.84 by the judgment creditor according to the judgment creditor. There is also a third debt of $26,627.11 by another judgment creditor filed on 10 April 1989 according to the Official Assignee. This, in my view, is totally irrelevant as the whole bankruptcy proceedings are a nullity. In any case, there is nothing to stop the judgment creditor filing a proper bankruptcy notice on the second debt if it was a judgment debt which it was not at the date of these arguments. I am also of the considered opinion that the fact that the first debt had been paid by the BCSB on 12 July 1989 in full did not render the bankruptcy notice valid in the circumstances nor does it estop the judgment debtor from making this application. The debt exists in consequence of the judgment and it is only the bankruptcy notice which is void ab initio that had rendered these bankruptcy proceedings a nullity.

On these considerations, I held that the bankruptcy notice was invalid by virtue of the existing law as restated in *Ghazali*'s case,[2] and that the whole proceedings were a nullity. The fact that the restatement of the law was made after the adjudication order and receiving order, the fact that the judgment debt had been paid in full about nine days before this application and the fact that proof of a second debt had been filed although it is not a judgment debt, were all quite irrelevant and secondary to the issue

of nullity but had in some way assisted this court to still come to the conclusion that the adjudication order and receiving order should be annulled and rescinded. The motion was accordingly granted but in view of the sequence of events, I ordered that each party bears his own costs.

Application allowed.

Solicitors: *Christina Chia & Partners; Yeap & Yeap.*

Reported by *Kevin Mathews*

Thor Beng Huat v Ooi Ee Guan & Anor

HIGH COURT (PENANG) — CIVIL SUIT NO 22-49-1987
EDGAR JOSEPH JR J
16 OCTOBER 1989

Societies — Defendants changed name of association with Registrar of Societies — Plaintiff alleged change of name fraudulent — Plaintiff obtained ex parte interim injunction restraining holding of extraordinary general meeting — Application by defendant for discharge of ex parte order — Societies Act 1949, s 18(d)

Civil Procedure — Injunction — Discharge of interlocutory injunction — Whether damages adequate remedy — Serious questions to be tried

The plaintiff was an ordinary member of the Yee Chee Thor Seah Clan Association. In 1987, the plaintiff instituted proceedings against the first and second defendants claiming that the defendants, as public officers of the association, were in breach of the terms of the constitution of the association and had misled the Registrar of Societies to change the name of the association from 'Chee Yee Thor Clan Association, Penang' to 'Yee Chee Thor Seah Clan Association, Malaysia' and that the defendants had fraudulently, mistakenly or otherwise submitted to the registrar a wrongful record of the minutes of the general meeting purportedly approving the change of name. It was also alleged by the plaintiff that the defendants were trying to ratify the change of name of the association by recruiting members of the Yee clan or by disqualifying existing members of the Chee, Thor and Seah clans through the non-collection of their monthly membership subscriptions so as to create a majority for themselves at an extraordinary general meeting. The plaintiff successfully obtained an ex parte interlocutory injunction restraining the holding of any extraordinary general meeting for the purposes of changing or endorsing the change of name of the association, preserving certain documents and disqualifying certain members from voting. The defendants then applied to the court to discharge the ex parte interlocutory injunction.

Held, dismissing the defendants' application:

(1) The ex parte interim injunction will remain because damages would not be an adequate remedy. The benefits and advantages which members enjoy are difficult if not impossible to quantify in terms of money or money's worth.

(2) The court found that there are serious questions to be tried. It follows that the preservation of documents referred to therein is a necessary step in the interest of justice.

(3) Subject to the qualification that the legality or propriety of the change of name be determined at the final hearing, the court has the jurisdiction to decide upon the rights of persons to associate together because the association has property to which the members are entitled. The intent and effort of the defendant's exercise in changing the name of the association is to deprive certain members of their membership.

(4) Section 18(d) speaks about the remedy of appeal to the registrar against the 'registrar's refusal to approve change of name etc'. However there is no provision in the Societies Act 1949 for appeal from the decision of the registrar approving the change of name. As such, the plaintiff has a right to appeal to this court.

(5) If the approval for change of name granted by the registrar is obtained fraudulently it becomes a nullity, in which case the plaintiff is not bound to resort to the remedy of appeal but may instead have collateral proceedings to attack the decision.

Cases referred to

1 *Rigby* v *Connol* [1874-80] All ER 592 (refd)
2 *American Cyanamid Co* v *Ethicon Ltd* [1975] AC 396 (refd)
3 *Professor A Kahar Bador & Ors* v *N Krishnan & Ors* [1983] 1 MLJ 407 (refd)
4 *Re St James' Club* (1852) 2 De GM & G 383; 42 ER 920 (refd)
5 *Harkness* v *Bell's Asbestos and Engineering Ltd* [1967] 2 QB 729 (refd)
6 *Eu Finance Bhd* v *Lim Yoke Foo* [1982] 2 MLJ 37 (refd)

Legislation referred to

Societies Act 1949 s 18(d)

Lim Boo Chang for the plaintiff.
Yu Meng Queng for the defendant.

Cur Adv Vult

Edgar Joseph Jr J: This was a defendants' application for discharge of an ex parte interlocutory injunction ('the ex parte order') made against them in their representative capacity as chairman and secretary of the Yee Chee Thor Seah Clan Association, Malaysia ('the association') upon the application of the plaintiff, an ordinary member of the association. The ex parte order directed as follows:

a) the association, its members, agents or servants or otherwise be restrained from holding any extraordinary general meeting for the purposes of changing or endorsing the change of name of the association until further order;

b) the first and the second defendants do surrender the following documents to the Registrar of Societies ('the registrar') until further order, namely —

i) minutes of all the meetings of the association;
ii) a full record of the members of the association;
ii) booklets of official receipts for membership subscriptions of the association;

c) all members who joined the association after 16 February 1986 (ie the date of the last general meeting) be and are disqualified from voting

until determination of the suit herein or further order of the court and it is further ordered that the costs of this application be costs in the cause and it is lastly ordered that there be liberty to apply.